*** THE HON'BLE MR JUSTICE B. PRAKASH RAO**
AND
*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

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+ WRIT PETITION NOS. 1657, 2949, 3779 AND 1135 OF 2004

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% 29-11-2006

WRIT PETITION NO. 1657 OF 2004:

R. Sai Babu and four others.

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Petitioners

Vs.

$ Bharat Sanchar Nigam Limited rep, by the Chairman and Managing Dierctor, Sanchar Bhavan, New Delhi and others.

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Respondents

! Counsel for the Respondents-applicants: Sri Vemuri Venkateswara Rao

^ Standing Counsel for BSNL: Sri Ch. Dhananjaya

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>Head Note

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[1] Judgment in O.A.Nos.401/02 and batch dated 24.3.2004

2 (1990) 4 SCC 55

3 1992 LAB IC 258

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 1657, 2949, 3779, and 1135 of 2004

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

W.P.No.1657 of 2003 is filed to quash the order of the Central Administrative Tribunal, Hyderabad in O.A.276 of 2003 dated 17.11.2003. W.P.No.1135 of 2004 is filed by BSNL aggrieved by the order of the Central Administrative Tribunal, Hyderabad in O.A.No.276 of 2003 dated 17.11.2003. W.P.No.3779 of 2004 is filed by BSNL aggrieved by the order of the Central Administrative Tribunal, Hyderabad in O.A.1354 of 2003 dated 18.11.2003 and W.P.N

o.2949 of 2004 is filed by the Union of India, and Bharat Sanchar Nigam Limited (BSNL), aggrieved by the order of the Central Administrative Tribunal, Hyderabad in O.A.1707 of 2003 dated 31.12.2003.

The relief sought for by the respondents – applicants, before the Central Administrative Tribunal, Hyderabad in O.A.276 of 2003 and batch, was to declare clause (iv) of paragraph 3, of the letter No.12-15/2002-DE dated 10.3.2002 issued by BSNL, as arbitrary and illegal, in so far as it denied the benefit of relaxation of standard to candidates who had participated in the 1999 and 2000 years departmental competitive examination for Junior Telecom Officers (15% quota) only, by holding that they were entitled for grant of the said benefit of relaxed standard with all consequential benefits such as inclusion in the merit list, promotion to the post of Junior Telecom Officers, seniority, pay and allowances etc.

On receipt of representations seeking application of relaxed standards for preparation of results, M/s BSNL (Departmental Examination Branch), vide proceedings dated 10.3.2003, informed all the Chief General Managers, Telecom Circles, that it had been decided that, in addition to the results already declared as per the standards mentioned , a separate merit list for unfilled vacancies may be drawn up for applying the relaxed standards in order to make available more departmental candidates for filling up the posts of JTOs under 15% quota. The relaxed criteria, prescribed in the proceedings dated 10.3.2003, reads as under:

"i. The condition for obtaining minimum qualifying standards in each subject will be dispensed with.

ii. The merit list will be prepared on the basis of the aggregate marks obtained in all four subjects by the candidates.
iii. The required minimum aggregate marks in all four subject will be 30% for OC candidates and 20% for SC/ST candidates. However, in respect of results which have been finalized between 27th July, 1997 and 3rd October, 2000 there would be no separate standards for SC/ST candidates and 30% will be uniformly applied to all candidates.
iv. The above relaxation would be applied to either of the two examinations i.e., the examination held in the year 1999 or in the year 2000 whichever was later. In short, the relaxation will not be applicable to both the examinations where the examination has been held in both the years but will be applicable to the last examination held in a circle under 15% quota and shall not be a precedent for any future examination.
v. In view of the fact that the candidates who will be considered for promotion on the basis of the above mentioned relaxed standards are employees absorbed in BSNL and also the fact that the JTOs are yet to be absorbed in BSNL, an undertaking may be obtained from the candidates, who are likely to be included in the additional list, to the effect that they will not make any claim for appointment and posting as JTO in any branch of Dept. of Telecommunications.
vi. The candidates who are selected on the basis of the above relaxed standards, will be sent for training after those candidates who have already been selected as per normal standard."

O.A.276 of 2003 and batch was allowed and clause iv of para 3 of the BSNL letter dated 10.3.2003, in so far as it denied relaxation of standards to such of the candidates who had participated in the departmental competitive examination for Junior Telecom Officers (15% quota) by the use of expression 'whichever was later', was declared illegal, arbitrary, discriminatory and was struck down. The Tribunal directed BSNL, and its officers, to extend the benefit of relaxation of standards in respect of the marks secured by the respondent-applicants in the 1999 examination and, if they were found qualified on the basis of the relaxed standards, to include their names in the merit list and to grant them all consequential benefits such as promotion to the post of J.T.Os, seniority, pay and allowances etc.

Following the order of the Tribunal, in O.A.No.276 of 2003 and batch dated 17.11.2003, O.A.1354 of 2003 was disposed of on 18.11.2003. Similarly O.A.No.1707 of 2003 was disposed of on 31.12.2003 in terms of the common order passed in O.A.No.276 of 2003 and batch. In none of the O.As, which are under challenge in the present batch of writ petitions, is the Union of India arrayed as a respondent nor has any relief been sought against it. The only relief sought for is against BSNL, consequent upon one of the conditions of relaxation mentioned in its proceedings dated 10.3.2003 being declared illegal.

The petitioners herein had raised an objection to the maintainability of

the O.As on the ground that, since M/s BSNL a company registered under the Companies Act was incorporated on 1.10.2000, appointments made thereafter to the post of JTOs was by the BSNL and the impugned proceedings dated 10.3.2003 under challenge in the O.As was also issued by the BSNL, the Tribunal had no jurisdiction to entertain the O.As or grant any relief against BSNL.

The respondents-applicants contended before the Tribunal that, since employees in the cadre of JTOs and Group A and B officers had not been absorbed into BSNL, the issue relating to promotion to Group B officers cadre lay within the domain of the department of telecommunications of the Government of India and that the said issue could only be decided by the Tribunal in exercise of its jurisdiction under Section 14 of the Administrative Tribunals Act, 1985. It was also contended that, in considering the claim of the applicants to be promoted to the posts of JTOs in group B cadre and in extending to them the benefit of relaxation of the aggregate marks, the O.M. dated 10.3.2003 issued by BSNL was in respect of the examination conducted by the department of telecommunications in the years 1999 and 2000. According to the respondents – applicants, since the department of telecommunications had conducted the examinations, as promotions were to be effected on the basis of the examination conducted by the department of telecommunications in the years 1999 and 2000 and orders of promotion to the cadre of JTOs Group B were to be issued based on these examinations held earlier by the department of telecommunications, the Tribunal had jurisdiction to consider the issues involved in all the O.As. though they had all been absorbed as Group C employees in the BSNL.

The Tribunal agreed with the contentions of the respondents – applicants and held that, since the matter in issue related to consideration for promotion to the category of JTOs (Group B Cadre) on the basis of the examination conducted by the department of telecommunications and as promotions were to be effected by the department of telecommunications in respect of the said cadre, in the event of it holding that the relaxed standards were to be applied even in respect of the examinations conducted in 1999 for the said selection, it had jurisdiction to entertain all the O.As, and to grant the relief sought for.

Sri Ch.Dhananjaya, Learned Standing Counsel for the BSNL, would refer

to the order of the Full Bench of the Jaipur Bench of the Central Administrative Tribunal in "**B.N.Sharma v. Union of India**[1]" wherein it was observed:-

"…..From the aforesaid, it is clear that even if BSNL is a Government company, necessarily there has to be a notification issued under sub-section(2) to Section 14 before this Tribunal will have jurisdiction to deal with these matters. This is obvious from the plain reading of the provision of Section 14 of the Act. Sub-section(3) to Section 14 makes it clear that this Tribunal shall have jurisdiction, powers and authority in relation to recruitment and matters concerning recruitment of all employees appointed to any service or post in connection with the affairs of the local or other authorities on and from the date specified in the notification issued under sub-section (2), which we have reproduced above. When notification under sub-section (2) is issued, such local or other authorities would be amenable to the jurisdiction of this Tribunal. Admittedly till date, no such notification has been issued and in the face of the aforesaid, it must be held that this Tribunal does not have jurisdiction to entertain the application pertaining to the applicants who are absorbed on the permanent strength of the BSNL……."

Learned standing counsel would submit that, in view of the authoritative pronouncement of the Full Bench of the Jaipur Bench of the Central Administrative Tribunal, the earlier view taken by its Hyderabad Bench is no longer good law and requires to be set aside.

Sri Vemuri Venkateswara Rao, learned counsel for the respondents – applicants, on the other hand, would submit that the Full Bench of the Jaipur Bench of the Central Administrative Tribunal had, by its order dated 24.3.2004, held that the Tribunal did not have jurisdiction over matters concerning BSNL, and as the order of the Full Bench came into force only on 24.3.2004, it is only thereafter that Central Administrative Tribunals ceased to have jurisdiction over employees of and matters concerning BSNL and not prior thereto. According to the learned counsel since all the O.As, which are subject matter of challenge in the present batch of writ petitions, were disposed of prior to 24.3.2004, the subsequent declaration of law by the Full Bench of the Central Administrative Tribunal would not affect the earlier orders passed and the Hyderabad Bench of the Central Administrative Tribunal had the jurisdiction to entertain and decide the impugned O.As on its merits. Learned counsel would submit that, in any event, what was in issue before the Tribunal was relaxation of the conditions prescribed pursuant to the examinations conducted by the department of telecommunications in the years 1999 and 2000 and the orders of promotion issued to the J.T.Os Group B and, since the Department of Telecommunications of the Government of India is amenable to the jurisdiction of the Tribunal, the Hyderabad Bench of the Central Administrative Tribunal had rightly exercised jurisdiction and had entertained the O.As.

While Sri Vemuri Venkateswarlu, and other counsel appearing on behalf of the other respondents-applicants, also sought to make submissions on the merits of the cases before us, we made it clear that we were only considering the question regarding maintainability of the O.As and the jurisdiction of the Tribunal to entertain, adjudicate and grant relief against BSNL, and that none of the other contentions would be examined at this stage.

The Administrative Tribunals Act is an Act to provide for adjudication or trial by Administrative Tribunals of all disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any state or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government. Tribunals, constituted under the Administrative Tribunals Act, are courts of limited jurisdiction. Section 14 of the Administrative Tribunals Act, which confers jurisdiction on Administrative Tribunals, reads thus:

"**14 Jurisdiction, Powers and Authority of the Central Administrative Tribunal:-**

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in Cl. (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in Cl. (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii} or sub clause (iii) of Cl. (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation – For the removal of doubts, it is hereby declared that references to 'Union' in the sub-section shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification apply with effect from such date as may be specified in the notification the provisions of sub-section. (3) to local or other authorities within the territory o f India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of local or other authorities or corporations or societies.
(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to-
(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and
(b) all service matters concerning a person other than a person referred to in Cl. (a) or Cl. (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs."

BSNL was incorporated as a company, under the Companies Act, 1956, on 1.10.2000, and thereafter is a legal entity distinct from the Department of Telecommunications of the Government of India and ceased to be a part thereof. Employees of BSNL are not central government employees and, on their absorption into the services of BSNL, they cease to be members of the All India Service. They are no longer in the Civil Service of the Union nor do they hold any civil post in the Union or a post connected with defence or in any defence service. While the Central Government, under Section 14(2) of the Administrative Tribunals Act, is empowered, by notification, to apply the provisions of sub-section(3) to a local or other authority within the territory of India and to Corporations under or controlled by the Central Government, the fact remains that no such notification has been issued till date. Accordingly the respondents – applicants, all of whom are employees of BSNL and not employees of the Department of Telecommunications of the Government of India, are not entitled to invoke the jurisdiction of the Central Administrative Tribunal under the provisions of the Administrative Tribunals Act.

Unlike statutory provisions, which unless the context otherwise provides, are prospective in operation, declaration of law by Courts/Tribunals stand on a different footing. Courts declare the law. They do not bring a law into existence. Provisions of the Statute, as interpreted by Courts/Tribunals, must be deemed to be in existence right from the inception of the enactment.

In this context, it is useful to refer to "**DR. Suresh Chandra Verma v. The Chancellor, Nagpur University**[2]", wherein the Supreme Court

observed:-

"……**It is unnecessary to point out that when the court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise**……."

In **Bombay Tyres International Limited v. B.P.Talathi**[3], the Bombay High Court held:

"…..As rightly urged by Mr.Kochar, learned counsel for the second respondent, when Court interprets a statutory provision, it is not making law which operates from the date of its judgment. The principle, as accepted in our jurisprudence, is that the Court explains or expounds the law and does no bring the law in to existence, which is the proper function of the competent Legislature. Any exposition of the law made by the Court would, therefore, relate back to the date from which the statute became operative……."

The contention, with regards prospective application of the law declared by Courts or Tribunals is, therefore, rejected. We affirm the view taken by the Full Bench of the Jaipur Bench of the Central Administrative Tribunal, that BSNL, in the absence of a notification being issued under Section 14(2) of the Administrative Tribunals Act, is not amenable to the jurisdiction of the Central Administrative Tribunal.

In the O.As, which are subject matter of challenge in these batch of writ petitions, it is the proceeding of BSNL dated 10.3.2003 which was under challenge. While relaxation of the conditions, as sought for, may have been for the examinations held by the Department of Telecommunications of the Government of India in the years 1999 and 2000, the fact remains that what was under challenge was the proceedings of BSNL dated 10.3.2003. Neither was the Department of Telecommunications of the Government of India arrayed as a respondent in the O.As nor was any relief sought for against it. It was only the validity of the proceedings of BSNL dated 10.3.2003, and its action in placing limitations on the relaxation to be given, which were in issue in the O.As, before the Tribunal. Since BSNL is not amenable to the jurisdiction of the Central Administrative Tribunal, the order of the Tribunal, in O.A.No.276 of 2003 and batch dated 17.11.2003 is without jurisdiction and is accordingly set aside.

The Writ Petitions are allowed and the order of the Tribunal, in O.A.276 of 2003 dated 17.11.2003, O.A.1354 of 2003 dated 18.11.2003 and O.A.1707 of 2003 dated 31.12.2003, are set aside. We make it clear that we have not examined any of other contentions raised either before us or before the Tribunal

and it is open to the respondents–applicants to avail such other remedies, as are available to them in law, to challenge the proceedings of BSNL dated 10.3.2003. No costs.

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B.PRAKASH RAO,J

Date: -11-2006

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RAMESH RANGANATHAN,J

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[1] Judgment in O.A.Nos.401/02 and batch dated 24.3.2004

[2] (1990) 4 SCC 55

[3] 1992 LAB IC 258